interstate business of the companies involved. *Baltic Mining Co.* v. *Massachusetts,* 34 Sup. Ct. 15. See NOTES, p. 477.

CONTRACTS—CONSIDERATION—MORAL OBLIGATION.—The defendant made a composition agreement with his creditors, expressly reserving from the operation of said agreement a moral obligation to pay one of the creditors in full. *Held,* the moral obligation reserved is sufficient consideration for a subsequent promise to pay. *Strius* v. *Cunningham,* 114 N. Y. Supp. 1014 (App. Div.).

It has been held that, where a debtor issues a circular letter to his creditors in which he assumed a moral obligation to buy back later certain securities, in consideration of the creditors then accepting such securities at an arbitrary valuation sufficient to settle the claim, this moral obligation constitutes adequate consideration for a subsequent promise to pay, even though the original claim was voluntarily released. *Taylor* v. *Hotchkiss,* 179 N. Y. 546, 71 N. E. 1140. This rule is followed in the principal case. There is, however, an almost unbroken line of authority to the effect that if the debt is discharged by the voluntary act of the parties a subsequent promise is invalid without new consideration to support it. *Warren* v. *Whitney,* 24 Me. 561, 41 Am. Dec. 406; *Rasmussen* v. *State National Bank,* 11 Colo. 301, 18 Pac. 28. Although when the discharge is involuntary by operation of law the cases are practically unanimous in holding that the moral obligation is sufficient consideration to support a new promise to pay. *Mutual Reserve, etc., Co.* v. *Beatty,* 35 C. C. A. 573, 93 Fed. 747; *Ross* v. *Jordan,* 62 Ga. 298. It would seem that the reservation of a moral obligation does not constitute consideration except under the New York rule as laid down in *Taylor* v. *Hotchkiss, supra.*

FEDERAL EMPLOYER'S LIABILITY ACT—INSTANTANEOUS DEATH.—The plaintiff sued under the Federal Employer's Liability Act, as father and administrator of his adult son who, while an employee, was killed instantaneously in a railroad accident, leaving no widow, child or mother. There was no evidence to show that the plaintiff was entitled to or had any reasonable expectation of financial support from his son. *Held,* there can be no recovery. *Carolina, C. & O. R. Co.* v. *Shewalter* (Tenn.), 161 S. W. 1136.

Act April 22, 1908, c. 149, sec. 1 (U. S. Comp. St. Supp. 1911, p. 1322) allows damages to the person injured, or in case of death, to his personal representative, for the benefit of certain designated beneficiaries. But when the suit is by the injured person, it does not survive him, in accordance with the maxim, *"actio personalis moritur cum persona." Fulgham* v. *Midland Valley R. Co.,* 167 Fed. 660; *Walsh* v. *New York, etc., R. Co.,* 173 Fed. 494. This led to the addition of Sec. 9, by act of April 5, 1910, allowing survival of this right of action. But as held in the principal case, this provision is inapplicable when the death is instantaneous, since at no time has the injured person a cause of action, and hence there is nothing to survive. It has been often so held with regard to similar "survival statutes" in the states. *Illinois Central R. Co.* v. *Pen-*

dergrass, 69 Miss. 425, 12 So. 954; *Kearney* v. *Boston & M. R. Co.*, 9 Cush. (Mass.) 108; *Dillon* v. *Great Northern R. Co.*, 38 Mont. 485, 100 Pac. 960. Nor could there be recovery by the administrator suing in behalf of certain designated beneficiaries, because this provision is modeled after Lord Campbell's Act, and the benefits to be expected must be pecuniary and financial. *Michigan Central R. Co.* v. *Vreeland*, 227 U. S. 59. Thus a father and mother, suing under this statute, cannot recover for the loss of a son, when it does not appear that they are financially interested in his life. *American R. Co., etc.* v. *Didricksen*, 227 U. S. 145. Hence the decision of the principal case, that when death is instantaneous and there are no beneficiaries pecuniarly interested, there can be no recovery at all, is manifestly correct.

FOREIGN CORPORATIONS—FAILURE TO COMPLY WITH STATUTE—EFFECT ON CONTRACTS.—A Kentucky statute provides that it shall not be lawful for any corporation to carry on business within the state until it shall have filed in the office of the Secretary of State a statement giving the location of its office therein, and the name of its agent upon whom process may be served, and that any corporation failing to comply with the section, and any agent thereof who transacts business within the state, shall be guilty of a misdemeanor and fined. In an action by a foreign corporation on a contract made before compliance with the statute, *Held*, the contract is void. *Oliver Co.* v. *Louisville Realty Co.* (Ky.), 161 S. W. 570. See NOTES, p. 470.

GUARDIAN AND WARD—MORTGAGE OF WARD'S REALTY—AUTHORITY OF INCAPACITATED GUARDIAN PASSING TO SUCCESSOR.—A guardian obtained an order from court authorizing him to execute a mortgage on the property of his ward. Before this mortgage was executed the guardian was incapacitated and a successor duly appointed. Acting solely on the authority of the former guardian the successor executed the mortgage. *Held*, the authority given to the first guardian passes *ipso facto* to his successor. *Bank* v. *Bangs* (Kan.), 136 Pac. 915.

In the absence of an order of court directing it or a statute authorizing it, a guardian has no power to mortgage the real property of his ward. *Roscoe* v. *McDonald*, 101 Mich. 313, 59 N. W. 603. As to whether such authority when given to one guardian passes *ipso facto* to his successor there seems to be a scarcity of authority on the question. But in the analogous case of the appointment of an administrator *d. b. n.* the rule is that a general power to dispose of realty given to one administrator does pass *ipso facto* to his successor on due appointment and qualification. *Gress Lum. Co.* v. *Leitner*, 91 Ga. 810, 18 S. E. 62; *Rogers* v. *Johnson*, 125 Mo. 202, 28 S. W. 635. There would seem to be no reason why the same rule should not apply in the case of the successor of an incapacitated guardian. Since a guardian is an officer of the court and the execution of the mortgage is under the supervision of the court, it would seem that the power to execute such a mortgage is one appertaining to the office of guardian rather than to the person, and it fol-